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SENSITIVE
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FOR MARY MCLEOD AND JAMES DONOVAN AT USUN

E.O. 12958: N/A
TAGS: IN PREL PTER
SUBJECT: DEMARCHE REGARDING COMPREHENSIVE CONVENTION ON
INTERNATIONAL TERRORISM (CCIT) NEGOTIATIONS

REF: A. 08 STATE 16075
1B. 08 STATE 76059
1C. 08 BEIJING 1165
1D. USUN 173

11. (U) Action Request: Please see para. 6-7.

12. (SBU) Summary: In light of the upcoming June meetings of the UN Committee that is considering the Comprehensive Convention on International Terrorism (CCIT) and in response to Indian inquiries concerning U.S. support for the proposed Convention, Embassy New Delhi and USUN are requested to inform Indian officials that the U.S. cannot accept as drafted the latest proposed text, which includes "compromise" language proposed by the Greek Coordinator in 12007. The Greek Coordinator's proposal would alter the standard military exclusion clause which is essential to the United States and like-minded governments and appears in several other international counterterrorism treaties. Further, the proposed Greek text would create unacceptable ambiguities with respect to whether certain actions of "national liberation movements" ("NLMs") (e.g. Hamas) are covered by the CCIT. As we do not believe that the language in the latest proposed text adequately addresses our concerns or would receive the support of OIC countries, the Indians should avoid bringing the CCIT to a vote.

13. (SBU) Background: The CCIT was initiated by the Government of India following counterterrorism conventions pioneered by the United States (Terrorist Bombing), Russia (Nuclear Terrorism), and France (Terrorist Financing). Unlike other counterterrorism conventions that have been negotiated successfully at the UN over the past two decades, the CCIT does not focus on a particular kind of terrorism but instead seeks an omnibus approach. The United States and other G8 partners had serious concerns about the wisdom of this approach and questioned whether such a convention, in light of all the previous sectoral conventions, would make a significant contribution to the counterterrorism legal framework. The United States worked with India to reshape the proposal so that it focused primarily on updating the older conventions and did not undercut their substantive provisions. While the resulting text does not offer any significant new additions to the legal framework for combating terrorism, its provisions (with the significant exception described below) do not undermine U.S. CT equities and, on that basis, the U.S. and other G8 partners ultimately acquiesced to India going forward with it.

14. (SBU) Almost all of the substantive text of the CCIT was successfully negotiated without significant controversy. The CCIT has been stalled since 2001, however, due to disagreement between the U.S. and like-minded governments and the Organization of the Islamic

Conference (OIC). The disagreement is focused on the scope of terrorist activity, with the OIC seeking (1) to weaken the exclusion of state military conduct from coverage under the CCIT (e.g. so as to facilitate, potentially, the characterization of military actions they oppose by Israel, the United States, and others as being "acts of terror" falling within the criminal and other

provisions of the conventions); and (2) to exclude the actions of NLMs (e.g. Hamas) from the scope of the CCIT. In early 2007, the Greeks proposed compromise language in an attempt to bridge the divide with the OIC. We have previously informed the Greek Coordinator, the Sri Lankan chairman of the Ad Hoc Committee, and P-5 and G-8 countries that we do not believe that the 2007 proposal adequately addresses our concerns and we are unable to support it as drafted, (Refs A, B, and C). As noted in Ref D, in the aftermath of the Mumbai attack, the Indians are now pushing to conclude the CCIT and have indicated that they want to take the CCIT to a vote quickly. In a January 16 demarche in New Delhi, the Indian Joint Secretary asked for USG support of the "current text," which includes the Greek Coordinator's 2007 proposal. The Indian Mission to the UN has also contacted USUN to ask whether the U.S. has new instructions concerning the Indian plan to put the CCIT to a vote. The Ad Hoc Committee that is considering the proposed Convention is scheduled to meet in New York from June 29 to July 2, 2009, and there is likely to be renewed pressure to come to closure on the text.

15. (SBU) The Greek Proposal: the Greek proposal would erode our position with respect to the two critical issues. First, any deviation from the standard military carve-out text that has been accepted in previous conventions will strengthen OIC efforts to interpret the carve-out in this and other conventions as providing more limited protection for state militaries. The carve-out text in previous CT treaties was the subject of vigorous negotiation and the text that resulted was the product of compromise. It included some ambiguities that were not ideal, but in the end provided enough confidence that the United States could proceed to join the respective conventions. Second, the ambiguity as to coverage of NLMs will be in conflict with our fundamental view that national liberation or other motivation does not excuse acts of terrorism. Further, OIC countries have given no indication that engaging in a negotiation of the Greek language, and any watering down of the carve-out provision that might follow, would in fact lead them to accept the Convention, so we would in essence be negotiating with ourselves from text that was already the subject of compromise in previous UN counterterrorism treaties.

16. (SBU) Embassy New Delhi and USUN are requested to convey the following to appropriate Indian officials:

-- The United States continues to support a Comprehensive Convention on International Terrorism that would strengthen the existing international counterterrorism legal regime and reinforce the critical principle that no cause or grievance justifies terrorism in any form.

-- A Convention that purports to address terrorism comprehensively cannot exclude the conduct of national liberation movements from its scope. At the same time, it should not reach state military action, which is subject to other international regimes and which has been excluded from prior counterterrorism conventions.

-- We continue to believe that the standard military carve-out found in these prior counterterrorism conventions, and as set out in Article 18 of the Coordinator's 2002 draft text, best promotes the priorities noted above and reflects the appropriate compromise of the various perspectives on this issue. In the absence of clear carve-out language, the Convention risks being used for political ends to target state military

actions--whether to suppress terrorism, revolts, or for other purposes--that a particular country or group doesn't like.

-- We have not been persuaded that there are any deficiencies that need to be remedied in the standard language that the international community has adopted five times before. In the nearly eight years that the Terrorist Bombing Convention has been in force, we are not aware of any criticism that states have inappropriately relied on its carve-out provisions, and we are similarly not aware of criticism relating to the application of the identical provisions in the other conventions. After closely examining the proposal for the military carve-out presented by the Greek Coordinator in 2007, we do not believe that, as drafted, it adequately addresses our concerns.

-- With regard to the official acts of state militaries, the proposal would add a clause in Article 18, paragraph 4 providing that "acts which would amount to an offense as defined in the Convention remain punishable under (other) laws." However, neither the domestic legal framework nor the international law framework is sufficiently comprehensive to make this true.

-- Equally problematic would be the addition of the newly proposed Article 18, paragraph 5, a savings clause related to the rules of international law applicable in armed conflict. This text would create unacceptable ambiguities in the scope of the Convention and would likely be invoked to argue that certain violent acts of "national liberation movements" are permissible under international humanitarian law and are therefore not terrorist acts.

-- Ambiguity with regard to the coverage of violent acts of national liberation movements would undermine the critical message that terrorism is criminal and unjustifiable regardless of motivation. Some of the proposed preambular language, particularly preambular paragraph 10 from the 2005 consolidated text, furthers such ambiguity.

-- In addition to our specific substantive concerns with the coordinator's proposal and our view that a deviation from the text previously accepted in other conventions is unjustified, we also have no expectation that the compromise proposed would be acceptable to the countries that have objected to the standard military carve-out language.

-- Under these circumstances, and given that the U.S. and India are in agreement that the Convention should not apply to the activities of state militaries, we believe it is critical to maintain a unified position in support of retaining the standard military carve-out. Efforts to renegotiate the standard language are unlikely to be productive and risk undermining the value of the instrument. They could also result in an instrument that the United States and other countries would not be able to support.

¶7. (U) Embassy New Delhi and USUN are also requested to report delivery of this demarche by June 8, 2009. Responses and/or questions should be directed to Peter Gutherie (L/LEI) (GutheriePA@state.gov; GutheriePA@state.sgov.gov; 202.647.5115), and Kristina Daugirdas (DaugirdasKB@state.gov; DaugirdasKB@state.sgov.gov; 202.647.2197). The Department greatly appreciates the assistance of Embassy and Mission. CLINTON